SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 980

ELECTRIC FURNACE CORPORATION,
Petitioner,

v.

DEERING MILLIKEN RESEARCH CORPORATION,
Respondent.

PETITION FOR REHEARING

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Petitioner Electric Furnace Corporation presents its petition for a rehearing in the above entitled cause, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

Petitioner Electric Furnace respectfully requests the Court to rehear its petition for certiorari on the ground that the Court of Appeals for the Sixth Circuit and this Court, have failed to consider the right of Electric Furnace to a jury trial under the Seventh Amendment to the United States Constitution.

Three juries heard this case and found for Electric Furnace.

Three times the trial court allowed the verdict (after modification) to stand.

After the first trial the Court of Appeals sent the case back for a new trial because despite their finding the defendant guilty of tortious conduct, they felt the proof of special damages was inadequate.

On the second and third trials, following the instructions outlined in the Court of Appeals opinion, the plaintiff presented proof that at least one customer, *Lowenstein & Co.*, (see testimony of E. S. Belsher and Stanley Livingstone) had quit doing business with Electric Furnace *because of the libelous letter*, and only began doing business again because of the trip Mr. Livingstone took to see Mr. Belsher and reassure him.

Despite this clear and uncontradicted testimony (and there is much other testimony that relies upon inference) the Court of Appeals has now stated that "the fatal deficiency in plaintiff's case resides in its *failure to show that any recipient of the accused letter gave it the meaning which Electric* asserts if fairly inferable from a reading of it."

Electric Furnace respectfully insists that the Court of Appeals should not be permitted to set aside a jury trial by ignoring not only inferences, but clear proof.

This constitutes a violation of the right of trial by jury.

Respectfully submitted,

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